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Paper 128
Entered: 6 February 2007

UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

Patent Interference No. 105,405 (RT)

SEARS ECOLOGICAL APPLICATIONS CO., LLC
(6,436,310 B1 and 6,440,325 B1),
Junior Party/Senior Party,¹

v.

MLI ASSOCIATES LLC
(10/266,975 and 10/690,894),
Senior Party/Junior Party.

JUDGMENT - Bd. R. 127 - Motions

Before GRON, TORCZON, and DELMENDO, *Administrative Patent Judges*.

TORCZON, *Administrative Patent Judge*.

1 The Board has held all of Sears' involved claims and all but two of MLI's
2 involved claims to be unpatentable on various grounds. Those two claims,
3 claims 43 and 44 of MLI's 10/266,975 application, correspond to count 1, for
4 which MLI is the senior party. Since Sears no longer has claims to contest the
5 priority of count 1 and MLI is the senior party for this count, the Director no
6 longer needs an interference to determine whether he can issue claims 43 and 44

¹ Junior as to count 1, but senior as to count 2.

1 of the 10/266,975 application in a patent to MLI. *Cf. Case v. CPC Int'l, Inc.*,
2 730 F.2d 745, 750, 221 USPQ 196, 200 (Fed. Cir. 1984) (noting "that Case's
3 patent is no impediment to granting CPC the claims of its application."). Rather
4 than drag the proceeding out further, and thus entitle MLI to additional term
5 adjustments, we exercise our discretion to end the proceeding at this point.

6 DECISION

7 In light of the Board's decision on motions (Paper 127)—

8 JUDGMENT is entered ADVERSE to Sears for the subject
9 matter of count 1;

10 Claims 1-12 of Sears' 6,436,310 patent, which correspond to
11 count 1, are CANCELLED;

12 Claims 9-14 and 18-20 of Sears' 6,440,325 patent, which
13 correspond to count 1, are CANCELLED;

14 JUDGMENT is entered ADVERSE to Sears for the subject
15 matter of count 2;

16 Claims 1-20 of Sears' 6,440,325 patent, which correspond to
17 count 2, are CANCELLED;

18 JUDGMENT is entered ADVERSE to MLI claims
19 corresponding to count 1 that have been held to be unpatentable;

1 Claims 38-42, 46, and 49 of MLI's 10/266,975 application are
2 finally REFUSED;

3 Claims 36 and 37 of MLI's 10/690,894 application are finally
4 REFUSED;

5 JUDGMENT is entered ADVERSE to MLI for the subject
6 matter of count 2; and

7 Claims 46 and 49 of MLI's 10/266,975 application are finally
8 REFUSED.

cc:

For Sears Ecological Applications Co., LLC: R. Danny Huntington, Malcolm K. McGowan, and Timothy A. Molino, BINGHAM MCCUTCHEN LLP, of Washington, D.C; and William R. Hansen, LATHROP & GAGE, L.C., and John Dellaportas, DUANE MORRIS LLP, both of New York, New York.

For MLI Associates LLC: Eugene C. Rzucidlo, HUNTON & WILLIAMS, LLP, and Alan B. Clement and John F. Volpe, HEDMAN & COSTIGAN, P.C., all of New York, New York.

Notice: Agreements and understandings regarding the termination of an interference are subject to filing requirements under 35 U.S.C. 135(c).
Notice: In the event of judicial review, note the requirements of Bd. R. 8(b).

Interference No. 105,405
SEARS v. MLI

cc (via electronic mail):

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